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## STATUTORY INSTRUMENTS

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# 1986 No. 1032

## The Companies (Northern Ireland) Order 1986 (revoked)

### PART XV

#### INVESTIGATION OF COMPANIES AND THEIR AFFAIRS; REQUISITION OF DOCUMENTS

**F1** Order repealed (prosp.) by [Companies Act 2006 \(c. 46\)](#), ss. 1284(2), 1295, 1300(2), [Sch. 16](#) and the repeal being partly in force, as to which see individual Articles (with savings (with adaptations) by Companies Act 2006 (Commencement No. 6, Saving and Commencement Nos. 3 and 5 (Amendment)) Order 2008 (S.I. 2008/674), arts. 2(3), {4}, Sch. 2) and subject to amendments (6.4.2008) by [Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), arts. 2(2), 3(1)(b)(2), [Sch. 1 paras. 135, 147, 148](#) {Sch. 2 Note 1} (with arts. 6, 11, 12) and subject to amendments (6.4.2008) by [S.R. 2008/133](#), {regs. 2, 3}

#### *Appointment and functions of inspectors*

#### *Investigation of a company on its own application or that of its members*

**424.**—(1) The Department may appoint one or more competent inspectors to investigate the affairs of a company and to report on them to the Department in such manner as the Department may direct.

(2) <sup>F1</sup> The appointment may be made—

- (a) in the case of a company having a share capital, on the application either of not less than 200 members or of members holding not less than one-tenth of the shares issued<sup>F2</sup> (excluding any shares held as treasury shares)];
- (b) in the case of a company not having a share capital, on the application of not less than one-fifth in number of the persons on the company's register of members, and
- (c) in any case, on application of the company.

(3) The application shall be supported by such evidence as the Department may require for the purpose of showing that the applicant or applicants have good reason for requiring the investigation.

(4) The Department may, before appointing inspectors, require the applicant or applicants to give security, to an amount not exceeding £5,000, or such other sum as it may by order, subject to negative resolution, specify, for payment of the costs of the investigation.

**F1** mod. by SR 2004/307

**F2** SR 2004/275

**Other company investigations**

**425.**—(1) The Department shall appoint one or more competent inspectors to investigate the affairs of a company and report on them in such manner as the Department directs, if the court by order declares that the company's affairs ought to be so investigated.

(2) The Department may make such an appointment if it appears to the Department that there are circumstances suggesting—

- (a) that the company's affairs are being or have been conducted with intent to defraud its creditors or the creditors of any other person or otherwise for a fraudulent or unlawful purpose, or in a manner which is unfairly prejudicial to some part of its members, or
- (b) that any actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be so prejudicial, or that the company was formed for any fraudulent or unlawful purpose, or
- (c) that persons concerned with the company's formation or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards it or towards its members, or
- (d) that the company's members have not been given all the information with respect to its affairs which they might reasonably expect.

[<sup>F3</sup>(2A) Inspectors may be appointed under paragraph (2) on terms that any report they may make is not for publication; and in such a case, the provisions of Article 430(3) (availability and publication of inspectors' reports) do not apply.]

(3) Paragraphs (1) and (2) are without prejudice to the powers of the Department under Article 424; and the power conferred by paragraph (2) is exercisable with respect to a body corporate notwithstanding that it is in course of being voluntarily wound up.

(4) <sup>F4</sup> The reference in paragraph (2)(a) to a company's members includes any person who is not a member but to whom shares in the company have been transferred or transmitted by operation of law.

**F3** 1990 NI 10

**F4** mod. by SR 2004/307

**Inspectors' powers during investigation**

**426** <sup>F5</sup>.—(1) If inspectors appointed under Article 424 or 425 to investigate the affairs of a company think it necessary for the purposes of their investigation to investigate also the affairs of another body corporate which is or at any relevant time has been the company's subsidiary or holding company, or a subsidiary of its holding company or a holding company of its subsidiary, they have power to do so; and they shall report on the affairs of the other body corporate so far as they think that the results of their investigation of its affairs are relevant to the investigation of the affairs of the company first mentioned.

*Para. (2) rep. by 1986 c. 60*

**F5** mod. by SR 2004/307

**Production of documents and evidence to inspectors**

**427** <sup>F6</sup>.—(1) When inspectors are appointed under Article 424 or 425, it is the duty of all officers and agents of the company, and of all officers and agents of any other body corporate whose affairs are investigated under Article 426(1)—

- (a) to produce to the inspectors all<sup>[F7]</sup> documents] of or relating to the company or, as the case may be, the other body corporate which are in their custody or power,
- (b) to attend before the inspectors when required to do so, and
- (c) otherwise to give the inspectors all assistance in connection with the investigation which they are reasonably able to give.

<sup>[F7]</sup>(2) If the inspectors consider that an officer or agent of the company or other body corporate, or any other person, is or may be in possession of information relating to a matter which they believe to be relevant to the investigation, they may require him—

- (a) to produce to them any documents in his custody or power relating to that matter,
- (b) to attend before them, and
- (c) otherwise to give them all assistance in connection with the investigation which he is reasonably able to give;

and it is that person's duty to comply with the requirement.]

<sup>[F7]</sup>(3) An inspector may for the purposes of the investigation examine any person on oath, and may administer an oath accordingly.]

(4) In this Article, a reference to officers or to agents includes past as well as present, officers or agents (as the case may be); and “agents”, in relation to a company or other body corporate, includes its bankers and solicitors and persons employed by it as auditors, whether those persons are or are not officers of the company or other body corporate.

(5) An answer given by a person to a question put to him in exercise of powers conferred by this Article (whether as it has effect in relation to an investigation under any of Articles 424 to 426, or as applied by any other Article in this Part) may be used in evidence against him.

<sup>[F8]</sup>(5A) However, in criminal proceedings in which that person is charged with an offence to which this paragraph applies—

- (a) no evidence relating to the answer may be adduced, and
- (b) no question relating to it may be asked,

by or on behalf of the prosecution, unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person.

(5B) Paragraph (5A) applies to any offence other than an offence under Article 7 or 10 of the Perjury (Northern Ireland) Order 1979 (false statements made on an oath otherwise than in judicial proceedings or made otherwise than on oath).]

<sup>[F7]</sup>(6) In this Article “documents” includes information recorded in any form; and, in relation to information recorded otherwise than in legible form, the power to require its production includes power to require the production of a copy of the information in legible form<sup>[F9]</sup>, or in a form from which it can readily be produced in visible and legible form].]

<b>F6</b>	mod. by SR 2004/307
<b>F7</b>	1990 NI 10
<b>F8</b>	1999 c. 23
<b>F9</b>	2001 c. 16

*Art. 428 rep. by 1990 NI 10*

### ***Obstruction of inspectors treated as contempt of court***

**429** <sup>F10</sup>.—<sup>[F11]</sup>(1) If any person—

*Status: Point in time view as at 01/01/2006. This version of this part contains provisions that are not valid for this point in time.*

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- (a) fails to comply with article 427(1)(a) or (c),
- (b) refuses to comply with a requirement under Article 427(1)(b) or (2), or
- (c) refuses to answer any question put to him by the inspectors for the purposes of the investigation,

the inspectors may certify that fact in writing to the court.]

(3) The court may thereupon inquire into the case; and, after hearing any witnesses who may be produced against or on behalf of the alleged offender and after hearing any statement which may be offered in defence, the court may punish the offender in like manner as if he had been guilty of contempt of the court.

**F10** mod. by SR 2004/307

**F11** 1990 NI 10

### ***Inspectors' reports***

**430** <sup>F12</sup>.—(1) The inspectors may, and if so directed by the Department shall, make interim reports to the Department, and on the conclusion of their investigation shall make a final report to the Department.

Any such report shall be written or printed, as the Department directs.

[<sup>F13</sup>(1A) Any persons who have been appointed under Article 424 or 425 may at any time and, if the Department directs them to do so shall, inform it of any matters coming to their knowledge as a result of their investigation.]

[<sup>F14</sup>(1B) If it appears to the Department that matters have come to light in the course of the inspectors' investigation which suggest that a criminal offence has been committed, and those matters have been referred to the appropriate prosecuting authority, it may direct the inspectors to take no further steps in the investigation or to take only such further steps as are specified in the direction.

(1C) Where an investigation is the subject of a direction under paragraph (1B), the inspectors shall make a final report to the Department only where—

- (a) they were appointed under Article 425(1) (appointment in pursuance of an order of the court), or
- (b) the Department directs them to do so.]

(2) If the inspectors were appointed under Article 425 in pursuance of an order of the court, the Department shall furnish a copy of any report of theirs to the court.

(3) In any case the Department may, if it thinks fit—

- (a) forward a copy of any report made by the inspectors to the company's registered office,
- (b) furnish a copy on request and on payment of the prescribed fee to—
  - (i) any member of the company or other body corporate which is the subject of the report,
  - (ii) any person whose conduct is referred to in the report,
  - (iii) the auditors of that company or body corporate,
  - (iv) the applicants for the investigation,
  - (v) any other person whose financial interests appear in the Department to be affected by the matters dealt with in the report, whether as a creditor of the company or body corporate, or otherwise, and

(c) cause any such report to be printed and published.

F12 mod. by SR 2004/307

F13 1986 c. 60

F14 1990 NI 10

### ***Power to bring civil proceedings on company's behalf***

**431** <sup>F15</sup>.—(1) [<sup>F16</sup>If from any report made or information obtained under this Part it appears to the Department] that any civil proceedings ought in the public interest to be brought by any body corporate, the Department may itself bring such proceedings in the name and on behalf of the body corporate.

(2) The Department shall indemnify the body corporate against any costs or expenses incurred by it in or in connection with proceedings brought under this Article.

F15 mod. by SR 2004/307

F16 1990 NI 10

### ***Expenses of investigating a company's affairs***

**432.**—<sup>F17</sup>(1) The expenses of an investigation under any of the powers conferred by this Part shall be defrayed in the first instance by the Department but it may recover those expenses from the persons liable in accordance with this Article.

There shall be treated as expenses of the investigation, in particular, such reasonable sums as the Department may determine in respect of general staff costs and overheads.]

(2) A person who is convicted on a prosecution instituted as a result of the investigation, or is ordered to pay the whole or any part of the costs of proceedings brought under Article 431, may in the same proceedings be ordered to pay those expenses to such extent as may be specified in the order.

(3) A body corporate in whose name proceedings are brought under that Article is liable to the amount or vale of any sums or property recovered by it as a result of those proceedings; and any amount for which a body corporate is liable under this paragraph is a first charge on the sums or property recovered.

(4) A body corporate dealt with by<sup>F17</sup> an inspectors' report], where the inspectors were appointed otherwise than of the Department's own motion, is liable except where it was the applicant for the investigation and except so far as the Department otherwise directs.

<sup>F17</sup>(5) Where inspectors were appointed—

(a) <sup>F18</sup> under Article 424, or

(b) <sup>F18</sup> on an application under Article 435(3),

the applicant or applicants for the investigation is or are liable to such extent (if any) as the Department may direct.]

(6) The report of inspectors appointed otherwise than of the Department's own motion may, if they think fit, and shall if the Department so directs, include a recommendation as to the directions (if any) which they think appropriate, in the light of their investigation, to be given under paragraph (4) or (5).

(7) For the purposes of this Article, any costs or expenses incurred by the Department in or in connection with proceedings brought under Article 431 (including expenses incurred under paragraph (2) of it) are to be treated as expenses of the investigation giving rise to the proceedings.

(8) Any liability to repay the Department imposed by paragraphs (2) and (3) is (subject to satisfaction of the Department's right to repayment) a liability also to indemnify all persons against

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liability under paragraphs (4) and (5); and any such liability imposed by paragraph (2) is (subject as mentioned above) a liability also to indemnify all persons against liability under paragraph (3).

(9) A person liable under any one of paragraphs (2) to (5) is entitled to contribution from any other person liable under the same paragraph, according to the amount of their respective liabilities under it.

**F17** 1990 NI 10

**F18** mod. by SR 2004/307

*Art. 433 rep. by 1990 NI 10*

### ***Inspectors' report to be evidence***

**434**<sup>F19</sup>.—(1) A copy of any report of inspectors appointed under<sup>F20</sup> this Part] certified by the Department to be a true copy, is admissible in any legal proceedings as evidence of the opinion of the inspectors in relation to any matter contained in the report<sup>F21</sup> and in proceedings on an application under<sup>F22</sup> Article 11 of the Company Directors Disqualification (Northern Ireland) Order 2002], as evidence of any fact stated in the report].

(2) A document purporting to be such a certificate as is mentioned in paragraph (1) shall be received in evidence and be deemed to be such a certificate, unless the contrary is proved.

**F19** mod. by SR 2004/307

**F20** 1990 NI 10

**F21** 1989 NI 18

**F22** 2002 NI 4

### *Other powers of investigation available to the Department*

#### ***Power to investigate company ownership***

**435.**—(1) Where it appears to the Department that there is good reason to do so, the Department may appoint one or more competent inspectors to investigate and report on the membership of any company, and otherwise with respect to the company, for the purpose of determining the true persons who are or have been financially interested in the success or failure (real or apparent) of the company or able to control or materially to influence its policy.

(2) The appointment of inspectors under this Article may define the scope of their investigation (whether as respects the matters or the period to which it is to extend or otherwise) and in particular may limit the investigation to matters connected with particular shares or debentures.

<sup>F23</sup>(3) If an application for investigation under this Article with respect to particular shares or debentures of a company is made to the Department by members of the company, and the number of applicants or the amount of shares held by them is not less than that required for an application for the appointment of inspectors under Article 424(2)(a) or (b), then, subject to the following provisions, the Department shall appoint inspectors to conduct the investigation applied for.

(3A) The Department shall not appoint inspectors if it is satisfied that the application is vexatious; and where inspectors are appointed their terms of appointment shall exclude any matter in so far as the Department is satisfied that it is unreasonable for it to be investigated.

(3B) The Department may, before appointing inspectors, require the applicant or applicants to give security, to an amount not exceeding £5,000, or such other sum as it may by order subject to negative resolution specify, for payment of the costs of the investigation.

(3C) If on an application under paragraph (3) it appears to the Department that the powers conferred by Article 437 are sufficient for the purposes of investigating the matters which inspectors would be appointed to investigate, it may instead conduct the investigation under that Article.]

(4) Subject to the terms of their appointment, the inspectors' powers extend to the investigation of any circumstances suggesting the existence of an arrangement or understanding which, though not legally binding, is or was observed or likely to be observed in practice and which is relevant to the purposes of the investigation.

**F23** 1990 NI 10

***Provisions applicable on investigation under Article 435***

**436.**—(1) For the purposes of an investigation under Article 435, Articles 426(1), 427, 429 and 430 apply with the necessary modifications of references to the affairs of the company or to those of any other body corporate, subject however to paragraphs (2)<sup>F24</sup> and (3)].

(2) Those Articles apply to—

- (a) all persons who are or have been, or whom the inspector has reasonable cause to believe to be or have been, financially interested in the success or failure or the apparent success or failure of the company or any other body corporate whose membership is investigated with that of the company, or able to control or materially influence its policy (including persons concerned only on behalf of others), and
- (b) any other person whom the inspector has reasonable cause to believe possesses information relevant to the investigation.

as they apply in relation to officers and agents of the company or other body corporate (as the case may be).

(3) If the Department is of opinion that there is good reason for not divulging any part of a report made by virtue of Article 435 and this Article, the Department may under Article 430 disclose the report with the omission of that part; and the Department may cause to be kept by the registrar a copy of the report with that part omitted or, in the case of any other such report, a copy of the whole report.

**F24** 1989 NI 18

***Power to obtain information as to those interested in shares, etc.***

**437.**—(1) If it appears to the Department that there is good reason to investigate the ownership of any shares in or debentures of a company and that it is unnecessary to appoint inspectors for the purpose, the Department may require any person whom the Department has reasonable cause to believe to have or to be able to obtain any information as to the present and past interests in those shares or debentures and the names and addresses of the persons interested and of any persons who act or have acted on their behalf in relation to the shares or debentures to give any such information to the Department.

(2) For this purpose a person is deemed to have an interest in shares or debentures if he has any right to acquire or dispose of them or of any interest in them, or to vote in respect of them, or if his consent is necessary for the exercise of any of the rights of other persons interested in them, or if other persons interested in them can be required, or are accustomed, to exercise their rights in accordance with his instructions.

(3) A person who fails to give information required of him under this Article, or who in giving such information makes any statement which he knows to be false in a material particular, or

recklessly makes any statement which is false in a material particular, is liable to imprisonment or a fine, or both.

### ***Power to impose restrictions on shares and debentures***

**438.**—(1) If in connection with an investigation under either Article 435 or 437 it appears to the Department that there is difficulty in finding out the relevant facts about any shares (whether issued or to be issued), the Department may by order direct that the shares shall until further order be subject to the restrictions imposed by Part XVI.

[<sup>F25</sup>(1A) If the Department is satisfied that an order under paragraph (1) may unfairly affect the rights of third parties in respect of shares then the Department, for the purpose of protecting such rights and subject to such terms as it thinks fit, may direct that such acts by such persons and for such purposes as may be set out in the order, shall not constitute a breach of the restrictions of Part XVI.]

(2) This Article, and Part XVI in its application to orders under it, apply in relation to debentures as in relation to shares [<sup>F25</sup> save that paragraph (1A) shall not apply.]

**F25** SR 1992/257

### ***Investigation of share dealings***

**439.**—(1) If it appears to the Department that there are circumstances suggesting that contraventions may have occurred, in relation to a company's shares or debentures, of Article 331 or 332 (taken with Schedule 13), or of Article 336(3) to (5) (restrictions on share dealings by directors and their families; obligation of director to disclose shareholding in his own company), the Department may appoint one or more competent inspectors to carry out such investigations as are requisite to establish whether or not such contraventions have occurred and to report the result of their investigations to the Department.

(2) The appointment of inspectors under this Article may limit the period to which their investigation is to extend or confine it to shares or debentures of a particular class, or both.

[<sup>F26</sup>(3) Articles 427 to 429 apply for the purposes of an investigation under this Article to the following persons as they apply to officers of the company or of the other body corporate—

- (a) an authorised person;
- (b) a relevant professional;
- (c) a person not falling within sub-paragraph (a) or (b) who may carry on a regulated activity without contravening the prohibition imposed by section 19 of the Financial Services and Markets Act 2000; and
- (d) in relation to an authorised person, to a relevant professional or to a person falling within sub-paragraph (c)—
  - (i) if it is a body corporate, any person who is or has been an officer of it,
  - (ii) if it is a partnership, any person who is or has been a partner in it,
  - (iii) if it is an unincorporated association, any person who is or has been a member of its governing body or an officer of it.

(3A) In paragraph (3)—

“authorised person” has the meaning given in section 31(2) of the Financial Services and Markets Act 2000;

“relevant professional” means a member of a profession if a body has been designated under section 326(1) of that Act in relation to that profession, and, in relation to such a profession, “member” has the meaning given in section 325(2) of that Act.]

(4) Articles 427 to 429 apply under paragraph (3)—

- [<sup>F27</sup>(a) to an individual who is an authorised person within the meaning of the Financial Services Act 1986;
- (b) to any individual who holds a permission granted under paragraph 23 of Schedule 1 to that Act;
- (c) to an officer (whether past or present) of a body corporate which is such an authorised person or holds such a permission;
- (d) to any partner (whether past or present) in a partnership which is such an authorised person or holds such a permission;
- (e) to any member of the governing body or officer (in either case whether past or present) of an unincorporated association which is such an authorised person or holds such a permission,]

as they apply to officers of the company or of the other body corporate.

*Paras. (5), (6) rep. by 1986 c. 60*

**F26** SI 2001/3649  
**F27** 1986 c. 60

### *Requisition and seizure of books and papers*

#### ***Department's power to require production of documents***

*Para. (1) rep. by 1990 NI 10*

(2) The Department may at any time, if it thinks there is good reason to do so, give directions to [<sup>F30</sup> a company] requiring it, at such time and place as may be specified in the directions, to produce such [<sup>F30</sup> documents] as may be so specified

(3) The Department may at any time, if it thinks there is good reason to do so, authorise an officer of the Department [<sup>F30</sup> or any other competent person], on producing (if so required) evidence of his authority, to require [<sup>F30</sup> a company] to produce to him forthwith any [<sup>F30</sup> documents] which [<sup>F30</sup> he] may specify.

(4) Where by virtue of paragraph (2) or (3) the Department or an officer of the Department [<sup>F30</sup> or other person] has power to require the production of [<sup>F30</sup> documents] from [<sup>F30</sup> a company], the Department or the officer [<sup>F30</sup> or other person] has the like power to require production of those [<sup>F30</sup> documents] from any person who appears to the Department or the officer [<sup>F30</sup> or other person] to be in possession of them; but where any such person claims a lien on [<sup>F30</sup> documents] produced by him, the production is without prejudice to the lien.

(5) The power under this Article to require [<sup>F30</sup> a company] or other person to produce [<sup>F30</sup> documents] includes power—

(a) if the [<sup>F30</sup> documents] are produced—

- (i) to take copies of them or extracts from them, and
- (ii) to require that person, or any other person who is a present or past officer of, or is or was at any time employed by, [<sup>F30</sup> the company] in question, to provide an explanation of any of them;

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(b) if the<sup>F30</sup> documents] are not produced, to require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.

(6) If the requirement to produce<sup>F30</sup> documents] or provide an explanation or make a statement is not complied with,<sup>F30</sup> the company] or other person on whom the requirement was so imposed is guilty of an offence and liable to a fine.

<sup>F30</sup>Articles 680 (restriction on prosecutions), 680A (liability of individuals for corporate default) and 680B (criminal proceedings against unincorporated bodies) apply to this offence.]

(7) However, where a person is charged with an offence under paragraph (6) in respect of a requirement to produce any<sup>F30</sup> documents], it is a defence to prove that they were not in his possession or under his control and that it was not reasonably practicable for him to comply with the requirement.

(8) A statement made by a person in compliance with such a requirement may be used in evidence against him.

<sup>F31</sup>(8A) However, in criminal proceedings in which that person is charged with an offence to which this paragraph applies—

- (a) no evidence relating to the statement may be adduced, and
- (b) no question relating to it may be asked,

by or on behalf of the prosecution, unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person.

(8B) Paragraph (8A) applies to any offence other than—

- (a) an offence under paragraph (6) or Article 444; or
- (b) an offence under Article 10 of the Perjury (Northern Ireland) Order 1979 (false statements made otherwise than an oath.)

<sup>F30</sup>(9) In this Article “documents” includes information recorded in any form; and, in relation to information recorded otherwise than in legible form, the power to require its production includes power to require the production of a copy of it in legible form<sup>F32</sup>, or in a form from which it can readily be produced in visible and legible form].]

**F28** prosp. subst. by 2005 NI 17 (which amendment repealed (1.10.2009) by Companies Act 2006 (c. 46), s. 1295, Sch. 16; S.I. 2008/2860, art. 4, Sch. 1 Pt. 2)

**F29** mod. by SR 2004/307

**F30** 1990 NI 10

**F31** 1999 c. 23

**F32** 2001 c. 16

F33

**F33** prosp. insertion by 2005 NI 17 (which amendment repealed (1.10.2009) by Companies Act 2006 (c. 46), s. 1295, Sch. 16; S.I. 2008/2860, art. 4, Sch. 1 Pt. 2)

### <sup>F34</sup>Entry and search of premises

**441**<sup>F35</sup>.—(1) A justice of the peace may issue a warrant under this Article if satisfied by complaint on oath made by or on behalf of the Department, or by a person appointed or authorised to exercise powers under this Part, that there are reasonable grounds for believing that there are on any premises documents whose production has been required under this Part and which have not been produced in compliance with the requirement.

(2) A justice of the peace may also issue a warrant under this Article if satisfied by complaint on oath made by or on behalf of the Department, or by a person appointed or authorised to exercise powers under this Part—

- (a) that there are reasonable grounds for believing that an offence has been committed for which the penalty on conviction on indictment is imprisonment for a term of not less than two years and that there are on any premises documents relating to whether the offence has been committed,
- (b) that the Department, or the person so appointed or authorised, has power to require the production of the documents under this Part, and
- (c) that there are reasonable grounds for believing that if production was so required the documents would not be produced but would be removed from the premises, hidden, tampered with or destroyed.

(3) A warrant under this Article shall authorise a constable, together with any other person named in it and any other constables—

- (a) to enter the premises specified in the complaint, using such force as is reasonably necessary for the purpose;
- (b) to search the premises and take possession of any documents appearing to be such documents as are mentioned in paragraph (1) or (2), as the case may be, or to take, in relation to any such documents, any other steps which may appear to be necessary for preserving them or preventing interference with them;
- (c) to take copies of any such documents; and
- (d) to require any person named in the warrant to provide an explanation of them or to state where they may be found.

(4) If in the case of a warrant under paragraph (2) the justice of the peace is satisfied by complaint on oath that there are reasonable grounds for believing that there are also on the premises other documents relevant to the investigation, the warrant shall also authorise the actions mentioned in paragraph (3) to be taken in relation to such documents.

(5) A warrant under this Article shall continue in force until the end of the period of one month beginning with the day on which it is issued.

(6) Any documents of which possession is taken under this Article may be retained—

- (a) for a period of three months; or
- (b) if within that period proceedings to which the documents are relevant are commenced against any person for any criminal offence, until the conclusion of those proceedings.

(7) Any person who intentionally obstructs the exercise of any rights conferred by a warrant issued under this Article or fails without reasonable excuse to comply with any requirement imposed in accordance with paragraph (3)(d) is guilty of an offence and liable to a fine.

Articles 680 (restriction on prosecutions), 680A (liability of individuals for corporate default) and 680B (criminal proceedings against unincorporated bodies) apply to this offence.

(8) For the purposes of Articles 442 and 444A (provision for security of information) documents obtained under this Article shall be treated as if they had been obtained under the provision of this Part under which their production was or, as the case may be, could have been required.

(9) In this Article “document” includes information recorded in any form.]

**F34** Art. 441 subst. 1990 NI 10, art. 12(1)

**F35** mod. by SR 2004/307

*Status: Point in time view as at 01/01/2006. This version of this part contains provisions that are not valid for this point in time.*

**Changes to legislation:** There are currently no known outstanding effects for the The Companies (Northern Ireland) Order 1986 (revoked), PART XV. (See end of Document for details)

**F36** prosp. insertion by 2005 NI 17 (which amendment repealed (1.10.2009) by Companies Act 2006 (c. 46), s. 1295, Sch. 16; S.I. 2008/2860, art. 4, Sch. 1 Pt. 2)

### **Provision for security of information obtained**

<sup>F37</sup>442 <sup>F38</sup>.—(1) No information or document relating to a<sup>F39</sup> company] which has been obtained under Article 440<sup>F39</sup> . . . shall, without the previous consent in writing of that<sup>F39</sup> company], be published or disclosed, except to a competent authority, unless the publication or disclosure is required—

- [<sup>F40</sup>(a) with a view to the institution of or otherwise for the purposes of criminal proceedings;]
- [<sup>F41</sup>(b) with a view to the institution of, or otherwise for the purposes of, any proceedings on an application under<sup>F42</sup> Article 9, 10 or 11 of the Company Directors Disqualification (Northern Ireland) Order 2002;]
- [<sup>F39</sup>(c) for the purposes of enabling or assisting any inspector appointed under this Part,<sup>F43</sup> . . . , to discharge his functions;]
- [<sup>F39</sup>(cc) for the purpose of enabling or assisting any person authorised to exercise powers<sup>F43</sup> Article 440 of this Order] or section 84 of the Companies Act 1989 to discharge his functions;]
- [<sup>F43</sup>(cd) for the purposes of enabling or assisting a person appointed under—
  - (i) section 167 of the Financial Services and Markets Act 2000 (general investigations),
  - (ii) section 168 of that Act (investigations in particular cases),
  - (iii) section 169(1)(b) of that Act (investigation in support of overseas regulator),
  - (iv) section 284 of that Act (investigations into affairs of certain collective investment schemes), or
  - (v) regulations made as a result of section 262(2)(k) of that Act (investigations into open-ended investment companies),
 to conduct an investigation to discharge his functions;]
- [<sup>F40</sup>(d) for the purpose of enabling or assisting the Department to exercise any of its functions under this Order, the Insider Dealing Order<sup>F39</sup> Part III of the Companies (Northern Ireland) Order 1990, Part II or V of the Companies (No. 2) (Northern Ireland) Order 1990] or<sup>F44</sup> the Prevention of Fraud (Investments) Act (Northern Ireland) 1940;
  - (dd) for the purpose of enabling or assisting the Secretary of State to exercise any functions conferred on him by the enactments relating to companies or insolvency, the Prevention of Fraud (Investments) Act 1958,<sup>F45</sup> or the Financial Services and Markets Act 2000,] or for the purpose of enabling or assisting any inspector appointed by him under the enactments relating to companies to discharge his functions;]

*Sub.#paras. (de), (df) rep. by SI 2001/3649*

- [<sup>F46</sup><sup>F47</sup>(dg) for the purpose of enabling or assisting the Occupational Pensions Regulatory Authority to discharge their functions under the Pension Schemes (Northern Ireland) Act 1993 or the Pensions (Northern Ireland) Order 1995 or any enactment in force in Great Britain corresponding to either of them,]

*Sub-para. (e) rep. by 1990 NI 10*

- [<sup>F40</sup>[<sup>F48</sup>(f) for the purpose of enabling or assisting the Bank of England to discharge its functions;]
- [<sup>F43</sup>(fa) for the purposes of enabling or assisting the Financial Services Authority to discharge its functions under the legislation relating to friendly societies or to industrial and provident

societies, under the Building Societies Act 1986, under Part 7 of the Companies Act 1989 or under the Financial Services and Markets Act 2000;

- (g) for the purposes of enabling or assisting a body corporate established in accordance with section 212(1) of the Financial Services and Markets Act 2000 (compensation scheme manager) to discharge its functions;
- (h) for the purposes of any proceedings before the Financial Services Tribunal by virtue of the Financial Services and Markets Act 2000 (Transitional Provisions) (Partly Completed Procedures) Order 2001;
- (ha) with a view to the institution of or otherwise for the purposes of proceedings before the Financial Services and Markets Tribunal;
- (hb) for the purpose of enabling or assisting a recognised investment exchange or a recognised clearing house to discharge its functions as such;
- (hc) for the purpose of enabling or assisting a body designated under section 326(1) of the Financial Services and Markets Act 2000 (designated professional bodies) to discharge its functions in its capacity as a body designated under that section;]

*Sub.#para. (i) rep. by SI 2001/3649*

*Sub.#para. (j) rep. by SI 2001/1283*

- (k) for the purpose of enabling or assisting the official assignee to discharge his functions under the enactments relating to companies or bankruptcy;
- (l) with a view to the institution of, or otherwise for the purposes of, any disciplinary proceedings relating to the exercise by a solicitor, auditor, accountant, valuer or actuary of his professional duties;

[ with a view to the institution of, or otherwise for the purposes of, any disciplinary  
F39(II) proceedings relating to the discharge by a public servant of his duties;]

[ for the purpose of enabling or assisting an overseas regulatory authority to exercise its  
F39(m) regulatory functions.]]

[<sup>F40</sup>  
F39F49(1A) In paragraph (1)—

[ in sub-paragraph (hb) “recognised investment exchange” and “recognised clearing house”  
F43(aa) have the same meaning as in section 285 of the Financial Services and Markets Act 2000;]

- (a) in sub-paragraph (II) “public servant” means an officer or servant of the Crown or of any public or other authority for the time being designated for the purposes of that sub-paragraph by the Department by order;
- (b) in sub-paragraph (m) “overseas regulatory authority” and “regulatory functions” have the same meaning as in section 82 of the Companies Act 1989.]

(1B) Subject to paragraph (1C), paragraph (1) shall not preclude publication or disclosure for the purpose of enabling or assisting any public or other authority for the time being<sup>F39</sup> designated for the purposes of this paragraph] by an order made by the Department to discharge any functions which are specified in the order.

(1C) An order under paragraph (1B) designating an authority for the purpose of that paragraph may—

- (a) impose conditions subject to which the publication or disclosure of any information or document is permitted by that paragraph; and
- (b) otherwise restrict the circumstances in which that paragraph permits publication or disclosure.

*Para. (1D) rep. by SI 2001/3649]*

(2) A person who publishes or discloses any information or document in contravention of this Article is guilty of an offence and liable to imprisonment or a fine, or both.

[<sup>F39</sup>Articles 680 (restriction on prosecutions), 680A (liability of individuals for corporate default) and 680B (criminal proceedings against unincorporated bodies) apply to this offence.]

[<sup>F39</sup>(3) For the purposes of this Article each of the following is a competent authority—

- (a) the Department,
- (b) an inspector appointed under this Part<sup>F43</sup> . . . ,

[ a person appointed under—

- <sup>F43</sup>(ba) (i) section 167 of the Financial Services and Markets Act 2000 (general investigations),
- (ii) section 168 of that Act (investigations in particular cases),
- (iii) section 169(1)(b) of that Act (investigation in support of overseas regulator),
- (iv) section 284 of that Act (investigations into affairs of certain collective investment schemes), or
- (v) regulations made as a result of section 262(2)(k) of that Act (investigations into open-ended investment companies),

to conduct an investigation;]

- (c) any person authorised to exercise powers<sup>F50</sup> or appointed<sup>F43</sup> under Article 440 of this Order]] or section 84 of the Companies Act 1989,
- (d) the Secretary of State,
- (e) the Treasury,
- (f) the Bank of England,
- (g) the Lord Advocate,
- (h) the Director of Public Prosecutions for Northern Ireland and the Director of Public Prosecutions in England and Wales,

[ the Financial Services Authority;]

<sup>F43</sup>(ha)

- (l) any constable,
- (m) any procurator fiscal.

(3A) Any information which may by virtue of this Article be disclosed to a competent authority may be disclosed to any officer or servant of the authority.]

[<sup>F40</sup>(4) An order under<sup>F39</sup> paragraph (1A)(a) or (1B)] is subject to negative resolution.]

- F37** prosp. subst. by [2005 NI 17](#)
- F38** mod. by [SR 2004/307](#)
- F39** [1990 NI 10](#)
- F40** [1986 c. 60](#)
- F41** [1989 NI 18](#)
- F42** [2002 NI 4](#)
- F43** [SI 2001/3649](#)
- F44** prosp. in part rep. by [1986 c. 60](#)
- F45** [SI 2004/355](#)
- F46** [1995 NI 22](#)
- F47** prosp. subst. by [2005 NI 1](#)
- F48** [1998 c. 11](#)
- F49** prosp. insertion by [2005 NI 1](#)

**F50** SI 1994/1696

### ***Punishment for destroying, mutilating, etc. company documents***

**443.**—(1) [<sup>F51</sup>An officer of a company<sup>F52</sup> . . . ] who—

- (a) destroys, mutilates or falsifies, or is privy to the destruction, mutilation or falsification of a document affecting or relating to the [<sup>F51</sup>company's] property or affairs, or
- (b) makes, or is privy to the making of, a false entry in such a document,

is guilty of an offence, unless he proves that he had no intention to conceal the state of affairs of [<sup>F51</sup>the company] or to defeat the law.

[<sup>F52</sup>(1A <sup>F53</sup> Paragraph (1) applies to an officer of an authorised insurance company which is not a body corporate as it applies to an officer of a company.)]

(2) Such a person as is mentioned in paragraph (1) who fraudulently either parts with, alters or makes an omission in any such document or is privy to fraudulent parting with, fraudulent altering or fraudulent making of an omission in, any such document, is guilty of an offence.

(3) A person guilty of an offence under this Article is liable to imprisonment or a fine, or both.

[<sup>F51</sup>(4) Articles 680 (restriction on prosecutions), 680A (liability of individuals for corporate default) and 680B (criminal proceedings against unincorporated bodies) apply to an offence under this Article.]

[<sup>F51</sup>(5) In this Article “document” includes information recorded in any form.]

**F51** 1990 NI 10

**F52** SI 2001/3649

**F53** mod. by SR 2004/307

### ***Punishment for furnishing false information***

<sup>F54</sup>**444** <sup>F55</sup>. A person who, in purported compliance with a requirement imposed under Article 440 to provide an explanation or make a statement, provides or makes an explanation or statement which he knows to be false in a material particular or recklessly provides or makes an explanation or statement which is so false, is guilty of an offence and liable to imprisonment or a fine, or both.

**F54** prosp. subst. by 2005 NI 17

**F55** mod. by SR 2004/307

### **[<sup>F56</sup>Disclosure of information by Department or inspector**

**444A.**—<sup>F57</sup>(1 <sup>F58</sup> This Article applies to information obtained under Articles 427 to 439.

(2) The Department may, if it thinks fit—

- (a) disclose any information to which this Article applies to any person to whom, or for any purpose for which, disclosure is permitted under Article 442, or
- (b) authorise or require an inspector appointed under this Part to disclose such information to any such person or for any such purpose.

[  
<sup>F59</sup>(3) Information to which this Article applies may also be disclosed by an inspector appointed under this Part to—

*Status: Point in time view as at 01/01/2006. This version of this part contains provisions that are not valid for this point in time.*

**Changes to legislation:** There are currently no known outstanding effects for the The Companies (Northern Ireland) Order 1986 (revoked), PART XV. (See end of Document for details)

- (a) another inspector appointed under this Part;
  - (b) a person appointed under—
    - (i) section 167 of the Financial Services and Markets Act 2000 (general investigations),
    - (ii) section 168 of that Act (investigations in particular cases),
    - (iii) section 169(1)(b) of that Act (investigation in support of overseas regulator),
    - (iv) section 284 of that Act (investigations into affairs of certain collective investment schemes), or
    - (v) regulations made as a result of section 262(2)(k) of that Act (investigations into open-ended investment companies),
 to conduct an investigation; or
  - (c) a person authorised to exercise powers under—
    - (i) Article 440 of this Order; or
    - (ii) section 84 of the Companies Act 1989 (exercise of powers to assist overseas regulatory authority).]
- (4) Any information which may by virtue of paragraph (3) be disclosed to any person may be disclosed to any officer or servant of that person.
- (5 <sup>F58</sup> The Department may, if it thinks fit, disclose any information obtained under Article 437 to—
- (a) the company whose ownership was the subject of the investigation,
  - (b) any member of the company,
  - (c) any person whose conduct was investigated in the course of the investigation,
  - (d) the auditors of the company, or
  - (e) any person whose financial interests appear to the Department to be affected by matters covered by the investigation.<sup>F60</sup>]

**F56** [Art. 444A](#) subst. 1990 NI 10, [art. 16](#)

**F57** prosp. subst. by 2005 NI 17

**F58** mod. by SR 2004/307

**F59** SI 2001/3649

**F60** prosp. insertion by 2005 NI 17 (which amendment repealed (1.10.2009) by [Companies Act 2006](#) (c. 46), s. 1295, [Sch. 16](#); S.I. 2008/2860, art. 4, [Sch. 1 Pt. 2](#))

### *Supplementary*

#### ***Privileged information***

**445.**—<sup>F61</sup>(1 <sup>F62</sup> Nothing in Articles 424 to 439 requires the disclosure to the Department or to an inspector appointed by the Department—

- (a) by any person of information which he would in an action in the High Court be entitled to refuse to disclose on grounds of legal professional privilege except, if he is a lawyer, the name and address of his client,

*Sub-para. (b) rep. by 1990 NI 10*

[<sup>F63</sup>(1A <sup>F62</sup> Nothing in Article 427, 436 or 439 requires a person (except as mentioned in paragraph (1B)) to disclose information or produce documents in respect of which he owes an obligation of confidence by virtue of carrying on the business of banking unless—

- (a) the person to whom the obligation of confidence is owed is the company or other body corporate under investigation,
- (b) the person to whom the obligation of confidence is owed consents to the disclosure or production, or
- (c) the making of the requirement is authorised by the Department.

(1B) Paragraph (1A) does not apply where the person owing the obligation of confidence is the company or other body corporate under investigation under Article 424, 425 or 426.]

<sup>F61</sup>(2) Nothing in Articles 440 to 444 compels the production by any person of a document which he would in an action in the High Court be entitled to refuse on grounds of legal<sup>F64</sup> professional] privilege, or authorises the taking of possession of any such document which is in the person's possession.

<sup>F61</sup>(3) The Department shall not under Article 440 require, or authorise an officer of the Department<sup>F63</sup> or other person] to require, the production by a person carrying on the business of banking of a document relating to the affairs of a customer of his unless either it appears to the Department that it is necessary to do so for the purpose of investigating the affairs of the first-mentioned person<sup>F65</sup> or the customer is—]

- <sup>F65</sup>(a) a person on whom a requirement has been imposed under that Article, or
- (b) an authorised insurance company on whom a requirement to produce information or documents has been imposed by or on behalf of the Secretary of State under Part XI of the Financial Services and Markets Act 2000.]

**F61** prosp. subst. by 2005 NI 17  
**F62** mod. by SR 2004/307  
**F63** 1990 NI 10  
**F64** 1989 NI 18  
**F65** SI 2001/3649

#### <sup>F66</sup>**Investigation of bodies incorporated outside Northern Ireland**

**446.**—(1) The provisions of this Part apply to bodies corporate incorporated outside Northern Ireland which are carrying on business in Northern Ireland, or have at any time carried on business there, as they apply to companies under this Order; but subject to the following exceptions, adaptations and modifications.

- (2) The following provisions do not apply to such bodies—
  - (a) Article 424 (investigation on application of company or its members),
  - (b) Article 431 (power to bring civil proceedings on the company's behalf),
  - (c) Articles 435 to 438 (investigation of company ownership and power to obtain information as to those interested in shares, &c.), and
  - (d) Article 439 (investigation of share dealings).

(3) The other provisions of this Part apply to such bodies subject to such adaptations and modifications as may be prescribed.]

**F66** 1990 NI 10

*Status: Point in time view as at 01/01/2006. This version of this part contains provisions that are not valid for this point in time.*

**Changes to legislation:** *There are currently no known outstanding effects for the The Companies (Northern Ireland) Order 1986 (revoked), PART XV. (See end of Document for details)*

**F67** prosp. insertion by 2005 NI 17 (which amendment repealed (1.10.2009) by Companies Act 2006 (c. 46), s. 1295, Sch. 16; S.I. 2008/2860, art. 4, Sch. 1 Pt. 2)

**F68**

**F68** prosp. insertion by 2005 NI 17 (which amendment repealed (1.10.2009) by Companies Act 2006 (c. 46), s. 1295, Sch. 16; S.I. 2008/2860, art. 4, Sch. 1 Pt. 2)

VALID FROM 06/04/2008

### **Offences by bodies corporate**

**446D.** Where an offence under any of Articles 441, 442 to 444 and 446B is committed by a body corporate, every officer of the body who is in default also commits the offence. For this purpose—

- (a) any person who purports to act as director, manager or secretary of the body is treated as an officer of the body, and
- (b) if the body is a company, any shadow director is treated as an officer of the company.

**Status:**

Point in time view as at 01/01/2006. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:**

There are currently no known outstanding effects for the The Companies (Northern Ireland) Order 1986 (revoked), PART XV.